

IN THE SPECIFICATION:

~~Page 2, delete lines 5 to 17.~~

REMARKS

Information Disclosure Statement

The Examiner stated that the listing of references in the specification on page 2 is not a proper information disclosure statement. The Examiner further stated that 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper". The Examiner concluded that unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Applicant responds by deleting the listing of the cited references from the specification on page 2 as shown.

Rejection under 35 U.S.C. 103(a)

The Examiner stated that Claims 1-25 are rejected under 35 U.S.C. 103(a) as being obvious over Lary [US 5,911,494] in view of Chien [US 5,485,358].

The Examiner corrected noted that the applied reference has a common inventor with the instant application.

The Examiner correctly described the law that if based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by:

(1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1 .131; 01(3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be

overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Applicant responds the commonly owned is intended to mean that the subject matter which would otherwise be prior art to the claimed invention and the claimed invention are entirely or wholly owed by the same person(s) or organization(s) at the time the claimed invention was made. Common ownership requires that the person(s) or organizations own 100 percent of the subject matter and 100 percent of the claimed invention. MPEP § 706.02(l)(1) and § 706.02(l)(2). Both the subject matter of the prior art and the claimed matter of the present invention are subject to an obligation of assignment to the same person (organization). At the time the invention was made, Banning Lary had an obligation of assignment of the subject matter and claimed matter of the prior art Halide patent to MacBrud Corporation organized under the state laws of Florida. MacBrud Corporation markets products (e.g. medical devices) both domestically and internationally. Both Banning Lary and his son Todd Lary, at the time the LED invention was made, had an obligation of assignment of the claimed matter to also MacBrud Corporation. To formalized this intent, the Applicant has filed assignment papers of 1) the subject matter prior art patent, and 2) the claimed invention filed currently with the PTO, to MacBrud Corporation.

The Applicant asserts that the Lary prior art reference is now declassified and that Chien fails to disclose a hat with a crown and a bill, a lens cover and a housing containing a battery, and a switch. Nor does Chien disclose a series of attachment including a series of hooks, a series of loops and segments of loops (as presented in figures 1-6, column 2, lines 44-67, column 3, lines 1-62 of Lary).

Chien only teaches the use of an array of LEDs in a headwear in order to increase lifetime of the light sources (title, figures 1-8, column 2, lines 39-42). The present invention is directed to use an efficient array of LED that provide significant brightness for various applications, and whereby the LED array can be adjusted with various colored LED in the array to meet requirements for certain applications, or simply provide a “cool” or “hot” light. Chien fails to teach, suggest or disclose using various colored LED to achieve the functions disclosed and claimed in the present invention.

It is therefore asserted by the Applicant the it would not have been obvious to a person of ordinary skill in the art at the time the invention was made to use the array of LEDs of Chien to achieve the present invention.

Reconsideration is requested of the rejection of independent claims 1, 14, 22, 23, 24, and 25 as be patentable under 35 U.S.C. §103 in view of the disclosures of Chien alone. Claims 2-13 and 15-21 depend directly or indirectly from the independent claims and are patentable for the same reasons that the independent claims are patentably distinct. Chien

fails to suggest those features of Applicants' invention, as discussed above. Appropriate withdrawal of this 103(a) rejection is therefore requested.

CONCLUSION

In conclusion, Applicants respectfully assert that claims 1-25 are patentable for the reasons set forth above and that the application is now in condition for allowance. Accordingly, an early notice of allowance is respectfully requested. The Examiner is requested to call the undersigned at (619) 980-8680 for any reason that would advance the instant application to issue.

Dated this eighth day of October, 2002.

Respectfully submitted,



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